

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:23-cv-00453

Philip James Emerson, Jr.,
Petitioner,

v.

Jerry Parker et al.,
Respondents.

O R D E R

Petitioner Philip James Emerson, Jr., filed this action as a petition for a writ of habeas corpus. Doc. 1. The case was referred to United States Magistrate Judge K. Nicole Mitchell.

On January 29, 2024, the magistrate judge issued a report recommending that the petition be dismissed without prejudice for failure to comply with an order of the court and for lack of subject matter jurisdiction. Doc. 17. Petitioner filed written objections that did not comply with the page limits set forth in Local Rule CV-72(c). Doc. 18. The magistrate judge struck the objections for noncompliance and gave petitioner five days to refile the objections within the applicable page limit. Doc. 19.

Petitioner filed an objection to the order striking his written objections. Doc. 21. A party objecting to an order must show that the magistrate judge's order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); *see A.M. Castle & Co. v. Byrne*, 123 F. Supp. 3d 895, 898 (S.D. Tex. 2015) (noting that a magistrate judge "is permitted broad discretion in resolving nondispositive pretrial motions"). Petitioner asserts that it was error to strike his objections. Local Rule CV-72(c) provides an eight-page limit for objections to reports and recommendations. Petitioner did not seek leave of court to exceed the page limit. The court overrules the objection because petitioner has not shown that the magistrate judge's order was clearly erroneous or contrary to law.

The court provided petitioner an opportunity to correct his filing, but petitioner did not file written objections to the report. When a party fails to object to a magistrate judge's report, the court reviews the record only for clear error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996) (en banc).

Having reviewed the magistrate judge's report, and being satisfied that it contains no clear error, the court accepts its findings and recommendation. This action is dismissed without prejudice. Any motion not ruled on is denied as moot.

So ordered by the court on May 7, 2024.



J. CAMPBELL BARKER
United States District Judge